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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte YASUHIKO AOKI,
KOJI TAKEGUCHI, and SUSUMU KINOSHITA

Appeal 2009-010589
Application 10/627,548
Technology Center 2600

Before JOHN C. MARTIN, ALLEN R. MacDONALD, and
CARL W. WHITEHEAD, JR., *Administrative Patent Judges*.

MacDONALD, *Administrative Patent Judge*.

DECISION ON APPEAL¹

¹ The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the “MAIL DATE” (paper delivery mode) or the “NOTIFICATION DATE” (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

STATEMENT OF CASE

Introduction

Appellants appeal under 35 U.S.C. § 134 from a rejection of claims 1, 3-9, 11, and 13-19. We have jurisdiction under 35 U.S.C. § 6(b).

Exemplary Claim(s)

Exemplary independent claim 1 under appeal reads as follows:

1. A system for communicating optical traffic between ring networks, comprising:
 - a first optical ring network and a second optical ring network, each optical ring network operable to communicate optical traffic comprising a plurality of wavelengths;
 - a first ring interconnect (RIC) node and a second RIC node, each RIC node coupled to the first and second optical ring networks;
 - the first RIC node operable to communicate optical traffic between the first and second optical ring networks;
 - wherein the second RIC node is inactive under normal system operation and not operable to communicate optical traffic between the first and second optical ring networks when the first RIC node is able to communicate optical traffic between the first and second optical rings networks;
 - the second RIC node comprising a rejection block operable to detect traffic of one or more wavelengths to determine when the first RIC node is unable to communicate optical traffic between the first and second optical ring networks, and
 - the second RIC node operable to communicate optical traffic between the first and second optical ring networks when the first RIC node is unable to communicate optical traffic between the first and second optical ring networks.

Rejections

1. The Examiner rejected claims 1, 3-5, 7-9, 11, 13-15, and 17-19 under 35 U.S.C. § 102(e) as being anticipated by Arecco (US 7,072,580 B2).
2. The Examiner rejected dependent claims 6 and 16 as being unpatentable under 35 U.S.C. § 103(a) over the combination of Arecco and Fevrier (US 5,612,805).²

Appellants' Contentions

At pages 14-15 of the Appeal Brief, Appellants contend that the Examiner erred in rejecting the claims because:

“There is no disclosure that under normal system operation a second RIC node (contended by the Office Action to be nodes E and E') is inactive and not operable to communicate optical traffic between the first and second optical ring networks when the first RIC node is able to communicate optical traffic between the first and second optical ring networks. There is no disclosure in *Arecco* that nodes E and E' are inactive under normal system operation.”

Issues on Appeal

Whether the Examiner has erred in rejecting claims 1, 3-5, 7-9, 11, 13-15, and 17-19 as being anticipated because Arecco fails to disclose the argued claim limitation?

ANALYSIS

We agree with the Appellants' above contention. Signals S₁ and S₂ are communicated between nodes E and E' and thus between the two rings

² The rejections of claims under 103(a) are not separately argued from the rejection of the claims under 102(e).

even though these signals are thereafter blocked by nodes D' and D, respectively.

CONCLUSIONS

- (1) Appellants have established that the Examiner erred in rejecting claims 1, 3-5, 7-9, 11, 13-15, and 17-19 as being anticipated under 35 U.S.C. § 102(e).
- (2) Appellants have established that the Examiner erred in rejecting claims 6 and 16 as being unpatentable under 35 U.S.C. § 103(a).
- (3) On this record, claims 1, 3-9, 11, and 13-19 have not been shown to be unpatentable.

DECISION³

The Examiner's rejections of claims 1, 3-9, 11, and 13-19 are reversed.

REVERSED

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³ We recommend that the Examiner (1) review column 2, lines 3-21, of US 7,054,264 B2 to Mor which teaches that is known in the prior art to use a ring network structure where under normal system operation a second RIC node is inactive and not operable to communicate traffic between the first and second ring networks when the first RIC node is able to communicate traffic between the first and second ring networks; and (2) determine if any rejections are appropriate with respect to the current application on appeal. *See* Mor's column 5, line 55, which teaches "optical fibers." *See also* Tanaka (US 6,633,538 B1) at column 1, lines 49-60.